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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,372	06/01/2005	Andries Gerhardus Dormehl	SF-110	2863

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Maxwell J Petersen  
Pauley Petersen Kinne & Erickson  
2800 West Higgins Road  
Suite 365  
Hoffman Estates, IL 60195

EXAMINER

HERTZOG, ARDITH E

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/516,372	Applicant(s) DORMEHL ET AL.	
	Examiner Ardith E. Hertzog	Art Unit 1754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2004 and 01 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-6 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). \*\*
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**\*\* See paragraph 2 of attached detailed Office action.**

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01 June 2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Priority*

1. This application has been filed under 35 U.S.C. § 371 based upon International Application PCT/IB03/02002 filed May 26, 2003 and published (in English) as WO 03/101893 on December 11, 2003. In accordance with MPEP § 1893.03(e), acknowledgement is made of the corresponding International Search Report (Form PCT/IPEA/210). Claims 1-6 are pending.
2. Receipt is acknowledged of a certified copy of the South African application referred to in the executed declaration filed June 1, 2005 (from the International Bureau, per PCT Rule 17.2(a)). If this copy is being filed to obtain the benefits of the foreign filing date under 35 U.S.C. § 119(a)-(d), applicant should also file a **claim** for such priority as required by 35 U.S.C. § 119(b) (note that no such claim appears in the declaration). Since the application being examined has entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. § 371, the claim for priority must be made during the pendency of the application and within the time limit set forth in the PCT and Regulations of the PCT. See 37 CFR § 1.55(a)(1)(ii). Any claim for priority under 35 U.S.C. § 119(a)-(d) or (f) or 365(a) or (b) not presented within the time period set forth in 37 CFR § 1.55(a)(1) is considered to have been **waived**. If a claim for foreign priority is presented after the time period set forth in 37 CFR § 1.55(a)(1), the claim may be accepted **if** the claim properly identifies the prior foreign application **and** is accompanied by a grantable

petition to accept an unintentionally delayed claim for priority. See 37 CFR § 1.55(c).

### ***Information Disclosure Statement***

3. Receipt is acknowledged of the information disclosure statement (IDS) filed June 1, 2005. As the submission is in compliance with the provisions of 37 CFR § 1.97, the IDS has been considered, in accordance with the enclosed PTO-1449.

### ***Declaration***

4. The executed declaration filed June 1, 2005 is defective, because **it does not identify the citizenship of each inventor**. Thus, a new declaration (or oath) in compliance with 37 CFR § 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

### ***Drawings***

5. It is initially noted that:

The drawings for the national stage application must comply with PCT Rule 11. The copy of the drawings provided by the International Bureau has already been checked and should be in compliance with PCT Rule 11. Accordingly, the drawings provided by the International Bureau... should be acceptable. The USPTO may not impose requirements beyond those imposed by the Patent Cooperation Treaty (e.g., PCT Rule 11). **However, the examiner does indeed have the authority to require new or more acceptable drawings if the drawings were published without meeting all requirements under the PCT for drawings.** (MPEP § 1893.03(f), emphasis added)

6. The drawings are objected to, **per the bolded citation above**, as failing to comply with PCT Rule 11.13(a)(c)(h), which state, in relevant part:

11.13 Special Requirements for Drawings

- (a) Drawings shall be executed in durable, black, sufficiently dense and dark, uniformly thick and well-defined, lines and strokes without colorings.
- (c) The scale of the drawings and the distinctness of their graphical execution shall be such that a photographic reproduction with a linear reduction in size to two-thirds would enable all details to be distinguished without difficulty
- (h) The height of the numbers and letters shall not be less than 0.32 cm.

It is respectfully submitted that the quality and scale of Figures 1 and 2 do not lend themselves to sufficiently clear and distinct reproduction. At the least, it is suggested that each figure be presented on its own sheet.

**7. Corrected drawing sheets in compliance with 37 CFR § 1.121(d) are required in reply to the Office action to avoid abandonment of the application.**

Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended". If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR § 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. **Any objection to the drawings will not be held in abeyance.**

### ***Claim Objections***

8. Claim 1 is objected to, because of the following informalities: In the preamble, **either** “which” should be inserted prior to “includes”, **or** “includes” should be revised as “including”, for clarity/proper claim format. Appropriate correction is required.

### ***Claim Rejections - 35 U.S.C. § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 2-6 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Said claims are considered vague, indefinite, and/or confusing, due to the improper Markush group language in claim 2; see MPEP § 2173.05(h) I. It is respectfully submitted that the phrase “selected from the group **comprising**” (rather than “selected from the group consisting of”) renders the intended scope of these claims unclear, in that it cannot be determined if the “strong oxidising agent” is **limited to** the recited materials or not. Note that claims 3-6 have been included in this rejection, given their dependence upon claim 2; that is, while claim 3 recites “the strong oxidising agent **is** hydrogen peroxide” (emphasis added), it is still not **clear** whether or not the claim is open to the presence of **any other** “oxidising agent”—including ones not explicitly recited in claim 2—given that, again, claim 2 recites “comprising”. Replacing “comprising” with “consisting of” in claim 2 would overcome this rejection. Appropriate correction is required.

***Allowable Subject Matter***

11. Claims 1-6 would be allowable **if** rewritten/amended to overcome the objection set forth in paragraph 8. above **and** the 35 U.S.C. § 112, second paragraph, rejection set forth in paragraph 10. above.

12. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach or to have suggested **processes for producing vanadyl sulphate solution** via the three **specific** steps recited in applicant's independent claim 1. In particular, there is no teaching nor suggestion of **instant step (3)**—namely, “contacting... vanadium trioxide suspension with a strong oxidising agent that is capable of raising the valency or oxidation state of the vanadium, thereby to dissolve the vanadium trioxide in the sulphuric acid to produce the vanadyl sulphate solution ( $\text{VO}\text{SO}_4$ )”—with the references of record providing no suggestion of combining a vanadium trioxide suspension with any such “strong oxidising agent” (i.e., one capable of raising the valency/oxidation state, as required by instant claim 1), in order to produce vanadyl sulphate. **Thus**, instant claims 1-6—again, **if** rewritten/amended per paragraph 11. above—would be considered allowable over the prior art of record.

***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure since directed to processes which produce vanadyl sulfate; those most recently published are considered indicative of the state of the art at the time of

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applicant's invention.

14. Any inquiry concerning this communication should be directed to Ardith E. Hertzog at 571-272-1347. The examiner can normally be reached on Monday through Friday (from about 7:30 a.m. - 3:30 p.m.).

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley S. Silverman, can be reached at 571-272-1358. The central fax number for all communications is now 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. For any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
AEH  
November 10, 2005

  
**STANLEY S. SILVERMAN**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1700**